

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111
Serial Number: 09/772,189
Filing Date: January 29, 2001
Title: BAG WITH ERGONOMICALLY DISPOSED HANDLE

Page 5
Dkt: 578.0001US01

REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on March 15, 2007, and the references cited therewith. Applicant respectfully requests reconsideration of the pending claims in view of the following comments.

Claims 24 and 25 have been added; as a result, claims 1, 6, 7, 10-12, and 24-25 are now pending in this application. No new matter has been added. Support for new claim 24 can be found at least in claim 1, in FIG. 7, and in the specification at p. 9, lines 3-15. Support for new claim 25 can be found in FIGS. 2, 6, and 7.

§102 Rejection of the Claims

Claim 1 was rejected under 35 USC § 102(b) as being anticipated by Fougères (USPN 4,978,024). Applicants respectfully traverse this rejection.

Applicants respectfully point out that “to anticipate a claim, the reference must teach every element of the claim”. See MPEP § 2131. In this case, claim 1 requires “a reinforcing structure comprising one layer of additional material, the reinforcing structure attached to the bag adjacent to the handle, the reinforcing structure having a vertical length less than the first and second sidewalls, the reinforcing structure having a horizontal length less than the first and second sidewalls”. However, Fougères fails to disclose such a reinforcing structure. As such, Fougères fails to teach or suggest every element of the invention of claim 1 and therefore Fougères fails to render claim 1 anticipated. Applicants respectfully request that this rejection be withdrawn.

§103 Rejection of the Claims

Claims 1, 7 and 10-12 were rejected under 35 USC § 103(a) as being unpatentable over Etessé (European Patent No. 0630822); Berthelsen (European Patent No. 0248679); and Fougères. Applicants respectfully traverse this rejection.

In response to this rejection, Applicants point out that objective evidence or secondary considerations, including commercial success, are relevant to the issue of obviousness and must be considered in every case in which they are present. See MPEP §2141. In this regard, Applicants draw the attention of the Examiner to the declaration of Sheldon Sturgis under 37

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Page 6
Dkt: 578.0001US01

CFR § 1.132 signed December 12, 2006 and originally submitted to the U.S. Patent and Trademark Office on December 20, 2006. The Sturgis declaration clearly establishes that bags including the features of claim 1 have achieved dramatic commercial success and therefore show that the invention as claimed is not obvious over the combination of Etesse, Berthelsen, and Fougères.

For at least these reasons, including those arguments previously presented, Applicants respectfully assert that claim 1 is not rendered obvious by Etesse in view of Berthelsen and Fougères. As claims 7 and 10-12 are dependent on claim 1, they are also not rendered obvious by Etesse in view of Berthelsen and Fougères. Applicants respectfully request that this rejection be withdrawn.

Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Etesse, Berthelsen et al. and Fougères, as applied to claim 1 above, and further in view of Japanese Patent No. 3-226460 to Toshiji Shimamoto. Applicants respectfully traverse this rejection.

Applicants again draw the attention of the Examiner to the declaration of Sheldon Sturgis under 37 CFR § 1.132 signed December 12, 2006 and originally submitted to the U.S. Patent and Trademark Office on December 20, 2006. The Sturgis declaration clearly establishes that bags including the features of claim 1 have achieved dramatic commercial success and therefore show that the invention as claimed is not obvious over the combination of Etesse, Berthelsen, Fougères, and Shimamoto. Therefore, Applicants respectfully request that this rejection be withdrawn.

Although not subject to the current rejections, Applicants further point out that new claim 24 requires that the handle be "positioned catercorner from pouring region". This feature is not disclosed or suggested by the cited references. As such, Applicants assert that new claim 24 is allowable.

Although not subject to the current rejections, Applicants further point out that new claim 25 requires that the reinforcing structure extend "beyond an edge of the first and second sidewalls". This feature is not disclosed or suggested by the cited references. As such, Applicants assert that new claim 25 is allowable.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111
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Page 7
Dkt: 578.0001US01

Conclusion


Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612-746-4782) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3688.

Respectfully submitted,

Date September 14, 2007

By



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